

IN THE CRIMINAL COURT OF DAVIDSON COUNTY, TENNESSEE,
AT NASHVILLE-DIVISION I

STATE OF TENNESSEE

v.

PERRY A. MARCH

Case No. 99-B-1290

2000 MAR -1 AM 8:51
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RESPONSE TO MOTION TO CONTINUE

The State has moved for a continuance based upon the ground that it "fears" that if this case is tried first then it will "increase the difficulty" in selecting a jury and diminish the possibility of this case being prosecuted if the two other cases result in conviction.

THE STATE'S REQUEST IS NOT TIMELY

The State has based its Motion on the fact that it recently learned that counsel in the other two pending cases would not be seeking a change of venue. A change of venue is a right that belongs to the Defendant. Kirk v. State, 41 Tenn. 344 (1860). There is no requirement for the defense to notify the state that it is not going to take an action that requires notice in the first place, until that notice is given the state has no reason to believe a change will be sought. No Notice is notice. The State has learned nothing that it did not know when the charges were filed (June of 1999), that being that the constitution requires Mr. March be tried in Davidson County. The State's request for a continuance is *not timely* (analogous to Tennessee Rule of Criminal Procedure, Rule 22).

REQUIRES MR. MARCH TO FORGO SPEEDY TRIAL AND VENUE
(CONSTITUTIONAL RIGHTS)

The essence of the State's Motion is that it wants to try the more serious cases first so those juries are not influenced by the trial of the theft case.¹ By the same logic, the theft case may be

¹ (The State must have thought this case serious at some point in time to request a \$250,000.00 bond.)

influenced by the more serious cases.

Mr. March is exercising his constitutional right to be tried by an impartial jury of the county in which the crime is alleged to have been committed and a physical venue in that county. The State wants a continuance. The State has *cited no authority* for the proposition that Mr. March must forgo his constitutional rights (speedy trial and venue) on the basis that the State “fears” this trial may affect its other trials. Their fear is *mere speculation*, not fact. Even the fact that some jurors of a first case are impaneled to try a second case against a defendant is not a ground for continuance. **Crider v. St.**, 98 Ga.App.164, 105 S.E. 2d 506 (Ga.App. 1958). A continuance would violate March’s right to a speedy trial and right of venue in the county of the offense in violation of the 6th and 14th Amendments to the Constitution of the United States America and Article 1 §9 of the State Constitution.

The State brought the charges against Mr. March, and chose the order of the trial as of 11/17/05. *The State can not now be heard to complain of a situation it created.*

FAILED TO MEET ITS BURDEN

The State has further *failed to meet its burden* that a continuance is warranted. **St. v. Markham**, 1 Tenn. 66 (1804), **Mitchell v. State**, 92 Tenn. 668, 23, SW 68 (1893), **Burns v. State**, 591 SW2d. 780 (Tenn.Cr.App. 1979), **Woods v. State**, 552 SW2d 782 (Tenn.Cr.App. 1977).

The Defense has argued a motion to dismiss for lack of speedy trial (which itself is an assertion of that right) and has, previous to the State’s Motion to Continue, filed a Demand for Speedy Trial. The position of the Defense is that this case go forward in Davidson County with Davidson County jurors on April 17, 2006 or be dismissed.

LOGIC IS FLAWED

The State asks this Court to hold in abeyance Defendant’s right to a Speedy Trial and thereby (according to their theory) impinge upon his right to receive a fair trial in Davidson County. The

State having argued that the publicity in first trial may affect the second, is itself the very reason this case may not be continued.

THE STATE CREATED THE PROBLEM

The media reported (Nick Beres, Channel 5, 6:00 p.m. news on 2/23/06) the State having suggested that their "case is strong". The defense has not commented on the strength of its, or the State's case, only that the defense will oppose the continuance. There has been little coverage of the theft case and no known statement about the relative strength of the case except from the office of the District Attorney General. Again, the State may not now complain of a situation it created. The State proposes that the conspiracy and murder cases should be tried first, yet now wish to make the theft case last, behind the conspiracy and murder respectively. If the logic were sound, the order would be murder, conspiracy and theft, the most serious case being tried first.

PREJUDICE

Mr. March will be prejudiced by a further delay in bringing this case to trial. Should he receive an acquittal on the second two cases he would remain subject to a Two Hundred Fifty Thousand Dollar (\$250,000.00) bond. This case is set for April 17, 2006, the conspiracy in June and the murder in August. The State chose the order of those trials. The defense prefers² that this case go forward on 4/17/06, obtain an acquittal, thereby; exonerating Mr. March of this, the first, indictment. The stress of these pending charges weighs heavily on Mr. March. Counsel for the defense has also prepared its defense; of course, with the knowledge that two other cases will follow and is prepared to proceed with the case, as it has been prepared with that knowledge in mind. When the State was asked why it chose to try the theft case first, it is stated that it was the oldest (oldest

² Demands

indictment apparently). The theft case is still the oldest case.


The State's Motion is neither for judicial economy nor to afford Mr. March a fair trial by an impartial jury, if it is, then it is too little too late. The media has repeatedly referenced Mr. March as fleeing the jurisdiction, yet discovery in another case (not provided in this case), indicated that Mr. Barrett, counsel then for Mr. March, advised the State that Mr. March was living in Mexico and Mr. Barrett would make him available "very quickly". (Exhibit 1 dated 6/4/99)

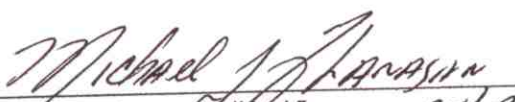
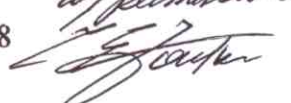
When Mr. March was transferred from California to Nashville, media was on the plane. When March was taken unnecessarily before a commissioner upon his arrival in Nashville, media was present. When being transferred in chains to juvenile court for a hearing regarding his children, media was present and lately the State, after filing a Motion to Continue, stated that (this) "case is strong".

It appears that the State chose the initial order of their cases to gain a tactical advantage. By trying the theft case first, Mr. March is forced to take the stand and is open to impeachment which can then be used in the upcoming case (only Murder at the time). Should the State prevail and a verdict of guilt returned then the state could use that prior conviction for impeachment should he decide to testify in the murder case.

Mr. March is entitled to a speedy trial, T.C.A. §40-14-101. He is entitled to have his case tried by a jury of his peers and be exonerated before beginning those "more serious" cases. A delay of nearly ten (10) years from the date of the offenses and nearly six (6) since indictment is long enough for the State to present this case for trial. Their "fear" is not a sufficient reason to trump the constitution rights of Mr. March to a speedy trial in Davidson County.

Respectfully Submitted:


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Certificate of Service

I hereby certify that a true and accurate copy of the foregoing Response to Motion to Continue was forwarded by U. S. Mail, postage prepaid, **Amy Eisenbeck and Ben Winters**, Assistant District Attorney General, 222 Second Avenue North, Suite 500, Nashville, TN 37201 on this 1 day of February, 2006.

Mark


C. Edward Fowlkes